

8 *Official Opinions of the Compliance Board 180 (2013)*

◆ **Minutes – Generally**

- ◇ Minutes to be prepared “as soon as practicable”
- ◇ When prompt adoption of minutes is impracticable through no fault of the public body, public body should provide meeting information in another form

*Topic headings correspond to those in the Opinions Index (2010 edition) at <http://www.oag.state.md.us/opengov/openmeetings/appf.pdf>

May 15, 2013

Re: University System of Maryland Board of Regents
(*Craig O'Donnell*)

We have considered the complaint of Craig O'Donnell (“Complainant”) that the University System of Maryland Board of Regents (the “Regents”) violated the Open Meetings Act (the “Act”) by “fail[ing] to timely approve the minutes of their February 15, 2013 meeting.” State Government Article (“SG”)§ 10-509(b) requires a public body to prepare written minutes “[a]s soon as practicable after [it] meets,” unless the public body keeps minutes in one of the other formats permissible under the Act.

The Regents regularly meet every other month and regularly adopt the minutes of each meeting during the next meeting. They duly adopted the minutes of the February 12 meeting at their next regular meeting. That meeting occurred 56 days later, on April 12, 2013. In effect, Complainant challenges the Regents’ practice of adopting their minutes only during their regular open meetings and asks us to declare that public bodies that meet every other month must take that action by an alternative method. Recognizing that challenge for what it is, the Regents in turn ask us to “validate [their] practice of preparing meeting minutes every-other-month in keeping with [their] regular meeting schedule.”

The Act does not take us down either path. We have recently explained the applicable principles in 8 *OMCB Opinions* 150, 159 (2013),¹ 8 *OMCB Opinions* 173 (2013), and 8 *OMCB Opinions* 176 (2013) and need not repeat them. In brief, when we apply the “as soon as practicable” standard, we look at the practical constraints on the public body responsible for adopting the minutes and also the interest of members of the public in acquiring relatively prompt information about a meeting they could not

¹ <http://www.oag.state.md.us/Opinions/Open2012/8omcb150.pdf>.

attend. *Id.* The constraints on a public body might vary according to the staff available to it or other circumstances beyond its control. *See, e.g., 8 OMCB Opinions 173 (2013).*²

Here, the sole impracticability claimed by the Regents is that they only meet every eight weeks or so. The apparent lack of practical constraints does not mean, however, that the Regents must begin to adopt their minutes by circulating drafts. As we stated in *7 OMCB Opinions 193, 194 (2011)*, it does not serve the goals of the Act to open the door to that method of conducting public business. Here, we are reluctant to open that door, not only for all the reasons stated in that opinion, but also because the Regents are to be encouraged to move away from practices that may have led to the complaints that have come to us over the last six months. Ideally, the Regents should provide the public with draft minutes as soon as they are generated and should only adopt minutes by circulating documents when, because of unforeseen circumstances, the interval between meetings becomes particularly long. *See 8 OMCB Opinions 173 (2013).*

In conclusion, we decline to declare in the abstract either that a public body may always wait two months, or that it may never wait two months, to adopt its minutes. Instead, we note that both the adoption of minutes by a quorum of the public body in an open meeting and the dissemination of information about a meeting serve policies of the Act. It is possible to accomplish both at once, and we encourage the Regents to do so.

Open Meetings Compliance Board

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² The Regents cite opinions in which we addressed delays of a comparable duration (*4 OMCB Opinions 1 (2004)*; *7 OMCB Opinions 8 (2010)*) and suggest that “the eight-week interval at issue here . . . falls within the range of temporal periods the OMCB previously has found acceptable.” Those opinions are not useful here, because those public bodies, unlike the Regents, presented non-routine reasons for each delay.